BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEBRA K. BARNES	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,035,591
ELECTREX, INC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INDEMNITY COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appealed the January 17, 2008, preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

ISSUES

On April 5, 2007, claimant fell in the street and injured her right shoulder while she was taking a drinking glass and her lunch bag to her car. In the January 17, 2008, Order, Judge Klein denied claimant's request for benefits. The Judge reasoned:

> Claimant was requested to move some parts between two separate buildings while she was working for the Respondent. She crossed the street, near to where her car was parked, stopped at her car and placed some personal items into it. This Court finds that the Claimant was making a personal trip, and her accident falls outside of the scope of the Workers Compensation Act.[1]

Claimant contends Judge Klein erred. First, claimant argues her accident occurred while she was moving materials between respondent's two buildings and any minor deviation did not affect the business purpose of the assigned task. Second, claimant argues taking her cup and lunch bag to her car served a business purpose. In that vein, claimant argued:

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[1] ALJ Order (Jan. 17, 2008).

> It is by the preponderance of evidence herein that claimant's deviation was minor, and this is supported by the *Sumner* case as a compensable claim. Furthermore, even if the Board finds that there was a deviation, there was a business purpose for claimant's trip. Claimant testified that her trip to her car was to put away her lunch bag and her water container. Both of these items were items that allowed the claimant to drink at work, and thus, stay properly hydrated, and the lunch bag allowed claimant to eat her lunch on the premises, which was to the benefit of the employer as admitted to in the testimony of employer's representative, Steve Krehbiel, at the time of the Preliminary Hearing. . . .[2]

And third, claimant contends her trip to her car should not be considered a deviation from her work activities as that "conduct was something that was allowed by the employer and never sanctioned by the employer as testified to by the claimant."[3] Accordingly, claimant requests the Board to reverse the January 17, 2008, Order and to remand the claim to the Judge for further proceedings.

Conversely, respondent and its insurance carrier contend the Order should be affirmed. They argue claimant must prove she did not deviate from her job by going to her car *and* that the accident was somehow related to her employment. Moreover, they argue respondent did not authorize personal trips off-premises and claimant's deviation violated respondent's policies. In short, respondent and its insurance carrier argue claimant's accident neither arose out of her employment nor in the course of her employment with respondent as it was for purely personal reasons and did not benefit respondent in any manner.

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of her employment with respondent. The Board notes, however, that at the preliminary hearing respondent and its insurance carrier objected to this claim being heard by Judge Klein rather than Judge Moore, who is normally assigned the Reno County accidents. That issue, however, has not been raised on this appeal.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned finds and concludes:

Claimant injured her right shoulder and arm on April 5, 2007, when she slipped and fell in the street while taking a drinking cup and her lunch bag to her car. The accident occurred when claimant deviated from taking a box of parts from one of respondent's

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[2] Claimant's Brief at 2, 3 (filed Feb. 13, 2008).

[3] *Id.* at 3.

buildings to its other building, which was located on the same block. The record is unclear whether claimant was carrying the parts at the time of her fall. Claimant testified she was taking the items to her car because snow had not been cleared from the sidewalks and she did not want to carry those items back and forth between respondent's buildings. She testified, in part:

> Well, since it was snowing, I gathered up my other stuff because -- since we work in between two buildings, we carry our things back and forth in between both buildings. . . . I had a coat, I had a large drinking glass, I had a lunch bag and then the parts. . . . Well, I thought since it was snowing out, I could just run across the street, put my stuff in the car and get back down the street with just no more than I had to take. . . I was going to put the big lunch bag and my big water glass in the car. . . . So I wouldn't have all the awkward stuff to carry because the streets hadn't been cleaned off and the sidewalks.[4]

Claimant also testified that respondent did not prohibit or sanction its employees for going to their vehicles while on the clock.

The accident did not occur on respondent's premises. Claimant's car was parked on the side of a public street that was opposite from respondent's buildings. And when she fell she was in the street approximately seven or eight feet from the rear of the car.

A co-worker helped claimant up from the snow-covered street. Claimant's boss, Sherry Teeter, took her to the Hutchinson Clinic for medical treatment where she was x-rayed and told nothing was broken and to follow up with respondent's doctor. Approximately a week later, claimant followed up with Dr. Albright.

At claimant's third visit with Dr. Albright, the doctor recommended an MRI. But that test was denied by either respondent or its insurance carrier. Claimant then sought treatment from her personal physician, Dr. Edwards, who ordered an MRI. That test showed claimant had a badly torn rotator cuff. On May 22, 2007, Dr. Goin performed surgery on claimant's right shoulder.

After recovering from her right shoulder surgery, claimant returned to work for respondent.

[4] P.H. Trans. at 12.

CONCLUSIONS OF LAW

Employers are required to provide workers compensation benefits to injured workers who sustain accidents that arise out of and in the course of their employment.[5] Moreover, the Workers Compensation Act is to be *liberally* construed to bring the parties within the provisions of the Act.

> It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.[6]

"Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case."[7] The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[8]

Claimant contends her claim is compensable by reason of the 2006 *Sumner*[9] decision in which the Kansas Supreme Court set forth the rules regarding employees' travel that has both a personal and business purpose. The Kansas Supreme Court

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[5] K.S.A. 2006 Supp. 44-501(a).

[6] K.S.A. 2006 Supp. 44-501(g).

[7] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[8] *Id.* at 278.

[9] *Sumner v. Meier's Ready Mix, Inc.*, 282 Kan. 283, 144 P.3d 668 (2006).

explained that only substantial deviations during a business trip would bar an injured worker from receiving workers compensation benefits. The Court wrote, in part:

> A trip which serves both a personal purpose and a business purpose, in that the performance of the service for the employer would have caused someone else to have taken the trip even if it had not coincided with the personal journey, is often referred to as a "dual purpose" trip. A dual purpose trip is generally considered to be within the course of employment. 1 Larson's Workers' Compensation Law § 16.02; see also *Smith v. Winfield Livestock Auction, Inc.*, 33 Kan. App. 2d 615, 619, 106 P.3d 94 (2005). However, the dual purpose rule does not extend to factual situations where the business errand would not have been undertaken if the personal errand had been abandoned or postponed. *Tompkins v. Rinner Construction Co.,* 194 Kan. 278, 398 P.2d 578 (1965). See 1 Larson's Workers' Compensation Law § 16. Additionally, when an employee takes a clearly identifiable side-trip, thereby deviating from the business route, the employee steps beyond the course of employment and toward his or her personal objective. 1 Larson's Workers' Compensation Law § 17.03[1]. (Citations omitted.)
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> In Kansas, the deviation must be so substantial that the employee is deemed to have abandoned any business purpose.
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> > "A deviation from the employer's work generally consists of a personal or non-business-related activity. The longer the deviation exists in time or the greater it varies from the normal business route or in purpose from the normal business objectives, the more likely that the deviation will be characterized as major. *In the case of a major deviation from the business purpose, most courts will bar compensation recovery on the theory that the deviation is so substantial that the employee must be deemed to have abandoned any business purpose* and consequently cannot recover for injuries received, even though he or she has ceased the deviation and is returning to the business route or purpose." (Emphasis added.) *Kindel*, 258 Kan. at 284.[10]

Although it is true deviations from a business errand for personal reasons remove an employee from the course of employment, it is also true some deviations may be so small as to be disregarded.

> An identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial. In some jurisdictions, the course of employment is deemed resumed

[10] *Id.* at 290, 291.

> if, having completed the personal errand but without having regained the main business route, the employee at the time of the accident was proceeding in the direction of the business destination. If the main trip is personal, a business detour retains its business character throughout the detour.[11]

The undersigned finds claimant's accident occurred only a short distance from respondent's premises and only steps away from the direct path between respondent's buildings. The undersigned finds claimant's slight deviation from the business purpose of her errand was so minor as to be negligible. Consequently, claimant's accident arose out of and in the course of her employment with respondent.

In summary, the January 17, 2008, preliminary hearing Order should be reversed and this claim should be remanded to the Judge to address claimant's request for benefits.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[12] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned reverses the January 17, 2008, preliminary hearing Order and finds that claimant's accident arose out of and in the course of her employment with respondent. In addition, the undersigned remands this claim to the Judge for further proceedings to address claimant's request for benefits.

IT IS SO ORDERED.

Dated this ____ day of April, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

[11] 1 *Larson's Workers' Compensation Law* § 17 (2007).

[12] K.S.A. 44-534a.